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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,566	02/23/2006	Brian A. Whittle	187287/US	3673
67374 7590 11/27/2007 MORGAN, LEWIS & BOCKIUS, LLP ONE MARKET SPEAR STREET TOWER SAN FRANCISCO, CA 94105			EXAMINER COLLINS, MICHAEL	
			ART UNIT 3651	PAPER NUMBER
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Non-Compliant Amendment (37 CFR 1.121)

Application No.

10/563,566

Examiner

Michael K. Collins

Applicant(s)

WHITTLE ET AL.

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 11 September 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
 - ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
 - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
 - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
 - ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: See Continuation Sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable, _____ Telephone No. _____

Continuation of 4(e) Other:

1. The reply filed on 9/11/2007 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): the applicant cancelled claims 1-22 directed toward a dispensing apparatus and added claims 23-36 which are directed to a formulation for a controlled drug or drug of abuse presented in a format. The applicant has amended in such a way as to provide a patentably distinct invention that has a different classification. Furthermore, the cancelled claims contained subject matter, i.e. the dispenser, which the examiner examined because of their classification and the amended claims contain subject matter which the examiner must restrict because the scope of claims is outside of the examiner's art. Accordingly, no claims can be examined at this time. See 37 CFR 1.111. Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).
2. Newly submitted claims 23-36 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the original claims 1-22 are directed to a dispensing apparatus classified in class 700, subclass 244. The amended claims 23-36 are directed to a formulation for a controlled drug or drug of abuse presented in a format classified in class 705, subclass 3. The claims are directed toward separate inventions.
3. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 23-36 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.